

**REMARKS**

Claims 9, 35, and 36 are currently pending in the application.

Claim 35 has been amended to correct a typographical error as suggested by the examiner. Thus, no new matter has been added.

Support for the amendment of Claim 36 can be found in the specification as filed on page 43, lines 2-4. No new matter has been added.

A Substitute Specification, excluding the claims, is submitted herewith to replace the originally filed specification which contained some extraneous marks in the margins. No new matter has been added.

The first paragraph following the Title has been amended, as suggested, to properly cross-reference related applications.

Submitted herewith is a terminal disclaimer in compliance with 37 CFR 1.321(c) to address the obviousness-type double patenting rejection of claims 9, 35, and 36 over claim 13 of U.S. Patent No. 6,248,939.

Claim 36 was rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 36 has been amended to recite "Progeny plants or plant parts" in line 1.

In addition, Claim 36 has been amended to clarify the reference to pedigree.

Claim now recites that the plants or plant parts have an oleic acid content of at least 57%.

Claim 36 was also rejected under 35 USC §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, has possession of the claimed invention.

Claim 36 clearly recites the oleic acid content as being at least 57%.

It is respectfully submitted that the one skilled in the art would have recognized that Applicants were in possession of the claimed invention at the time of filing.

Claim 36 was also rejected under 35 USC §112, first paragraph, because the "specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims.

Claim 36 now recites progeny plants or plant parts obtained from any line derived from a cross using the corn line of claim 9 wherein said plants or plant parts have an oleic acid content of at least 57%.

Submitted herewith is a copy of a Declaration of Dr. Ken Leto, the inventor of the subject application. This Declaration was previously submitted in connection with the prosecution of Application No. 08/693,079 now U.S. Patent No. 6,248,939.

Dr. Leto's declaration documents progress toward the recovery of high oleic varieties during the early stages of a backcross conversion breeding program utilizing either B73OL or AEC272OL as an oleic donor. Many of these lines possess oleic contents in excess of 57%. Together, this is evidence of the fact that diverse sources of the high oleic trait exist, many of which can be successfully employed to produce a wide number of high oleic inbred and hybrid lines of corn.

It was also stated on page 9 of the Office Action that "Alrefai et al. also teach that oleic acid content is highly environmentally dependent (see, e.g., page 989, Table 3, "18:1" column)." Attention is kindly invited to page 24 of the instant specification at lines 30 – 33 which states that "Data presented in Table 3 represent grain produced in the winter in Molokai, Hawaii, and bulked grain produced in the same manner in the summer near Newark, Delaware averaged 9.6% oil and 64.1% oleic acid."

Accordingly, it is respectfully submitted that one skilled in the art would not need to engage in undue experimentation to practice the claimed invention.

The Examiner's presumption is correct that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made.

Claim 36 was rejected under 35 USC §102(b) as anticipated by, or in the alternative, under 35 §103(a) as obvious over Misevic et al.

In order for a reference to anticipate, it must teach each and every element of the claimed invention. Misevic et al. do not teach or suggest progeny plants or plant parts obtained from any line derived from a cross using the corn line of claim 9 wherein said plants or plant parts have an oleic acid content of at least 57%.

Thus, it is respectfully submitted that Misevic et al. do not anticipate or render obvious the claimed invention.

Claim 36 was rejected under 35 USC §102(b) as anticipated by, or in the alternative, under 35 §103(a) as obvious over Wright et al.

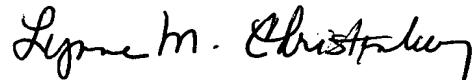
Wright et al. is believed to be inapposite for all of the reasons discussed above with respect to Misevic et al.

In view of the foregoing, it is respectfully submitted that the claims are now in form for allowance which allowance is respectfully requested.

A petition for a one (1) month extension of time, including and up to July 26, 2003, accompanies this response along with a Substitute Specification, Terminal Disclaimer, and a copy of Declaration I of Dr. Leto.

Please charge any fees associated with the filing of this response, including but not limited to the Extension of Time and Terminal Disclaimer, to Deposit Account No. 04-1928 (E. I. du Pont the Nemours and Company). If the fee is insufficient or incorrect, please charge or credit the balance to the above-identified deposit account.

Respectfully submitted,



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